

§ 137.272 What other alternatives are available for Self-Governance Tribes to perform construction projects?

Self-Governance Tribes also have the option of performing IHS construction projects under a variety of other legal authorities, including but not limited to Title I of the Act, the Indian Health Care Improvement Act, Public Law 94-437, and Public Law 86-121. This subpart does not cover projects constructed pursuant to agreements entered into under these authorities.

§ 137.273 What are IHS construction PSFAs?

IHS construction PSFAs are a combination of construction projects as defined in § 137.280 and construction programs.

§ 137.274 Does this subpart cover construction programs?

No, except as provided in § 137.275, this subpart does not cover construction programs such as the:

- (a) Maintenance and Improvement Program;
- (b) Construction program functions; and,
- (c) Planning services and construction management services.

§ 137.275 May Self-Governance Tribes include IHS construction programs in a construction project agreement or in a funding agreement?

Yes, Self-Governance Tribes may choose to assume construction programs in a construction project agreement, in a funding agreement, or in a combination of the two. These programs may include the following:

- (a) Maintenance and improvement program;
- (b) Construction program functions; and
- (c) Planning services and construction management services.

CONSTRUCTION DEFINITIONS

§ 137.280 Construction Definitions.

ALJ means administrative law judge.
APA means Administrative Procedures Act, 5 U.S.C. 701–706.

Budget means a statement of the funds required to complete the scope of work in a construction project agree-

ment. For cost reimbursement agreements, budgets may be stated using broad categories such as planning, design, construction, project administration, and contingency. For fixed price agreements, budgets may be stated as lump sums, unit cost pricing, or a combination thereof.

Categorical exclusion means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

CEQ means Council on Environmental Quality in the Office of the President.

Construction management services (CMS) means activities limited to administrative support services; coordination; and monitoring oversight of the planning, design, and construction process. CMS activities typically include:

- (1) Coordination and information exchange between the Self-Governance Tribe and the Federal Government;
- (2) Preparation of a Self-Governance Tribe's project agreement; and
- (3) A Self-Governance Tribe's subcontract scope of work identification and subcontract preparation, and competitive selection of construction contract subcontractors.

Construction phase is the phase of a construction project agreement during which the project is constructed, and includes labor, materials, equipment and services necessary to complete the work, in accordance with the construction project agreement.

Construction project means:

- (1) An organized noncontinuous undertaking to complete a specific set of predetermined objectives for the planning, environmental determination, design, construction, repair, improvement, or expansion of buildings or facilities described in a project agreement, and

(2) Does not include construction program administration and activities described in sections 4(m)(1) through (3) of the Act [25 U.S.C. 4b(m)(1) through (3)], that may otherwise be included in a funding agreement under section 505 of the Act [25 U.S.C. 458aaa–4].

Construction project agreement means a negotiated agreement between the Secretary and a Self-Governance Tribe, that at a minimum:

- (1) Establishes project phase start and completion dates;
- (2) Defines a specific scope of work and standards by which it will be accomplished;
- (3) Identifies the responsibilities of the Self-Governance Tribe and the Secretary;
- (4) Addresses environmental considerations;
- (5) Identifies the owner and operations and maintenance entity of the proposed work;
- (6) Provides a budget;
- (7) Provides a payment process; and
- (8) Establishes the duration of the agreement based on the time necessary to complete the specified scope of work, which may be 1 or more years.

Design phase is the phase of a construction project agreement during which project plans, specifications, and other documents are prepared that are used to build the project. Site investigation, final site selection activities and environmental review and determination activities are completed in this phase if not conducted as a part of the planning phase.

Maintenance and improvement program:

- (1) As used in this subpart means the program that provides funds for eligible facilities for the purpose of:
 - (i) Performing routine maintenance;
 - (ii) Achieving compliance with accreditation standards;
 - (iii) Improving and renovating facilities;
 - (iv) Ensuring that Indian health care facilities meet existing building codes and standards; and
 - (v) Ensuring compliance with public law building requirements.
- (2) The maintenance and improvement program is comprised of routine maintenance and repair funding and project funding. Typical maintenance

and improvement projects have historically been funded out of regional or national project pools and may include, but are not limited to, total replacement of a heating or cooling system, remodel of a medical laboratory, removal of lead based paint, abatement of asbestos and abatement of underground fuel storage tanks. Maintenance and repair program funding provided under a funding agreement is not covered under this subpart.

NEPA means the National Environmental Policy Act of 1969 [42 U.S.C. 4321 *et seq.*].

NHPA means the National Historic Preservation Act [16 U.S.C. 470 *et seq.*].

Planning phase is the phase of a construction project agreement during which planning services are provided.

Planning services may include performing a needs assessment, completing and/or verifying master plans, developing justification documents, conducting pre-design site investigations, developing budget cost estimates, conducting feasibility studies as needed, conducting environmental review activities and justifying the need for the project.

SHPO means State Historic Preservation Officer.

Scope of work or specific scope of work means a brief written description of the work to be accomplished under the construction project agreement, sufficient to confirm that the project is consistent with the purpose for which the Secretary has allocated funds.

THPO means Tribal Historic Preservation Officer.

NEPA PROCESS

§ 137.285 Are Self-Governance Tribes required to accept Federal environmental responsibilities to enter into a construction project agreement?

Yes, under section 509 of the Act [25 U.S.C. 458aaa–8], Self-Governance Tribes must assume all Federal responsibilities under the NEPA of 1969 [42 U.S.C. 4321 *et seq.*] and the National Historic Preservation Act [16 U.S.C. 470 *et seq.*] and related provisions of law that would apply if the Secretary were to undertake a construction project, but only those responsibilities directly related to the completion of the construction project being assumed.